

## **REMARKS**

Claims 1-32 are pending in the present application.

Claims 1-32 stand rejected under 35 U.S.C. § 102(b) over Lupien et al., U.S. Patent No. 6,098,051 ("*Lupien*").

The Applicant respectfully submits that all of the Applicant's arguments and amendments are without *prejudice* or *disclaimer*. In addition, the Applicant has merely discussed example distinctions from the cited prior art. Other distinctions may exist, and as such, the Applicant reserves the right to discuss these additional distinctions in a future Response or on Appeal, if appropriate. The Applicant further respectfully submits that by not responding to additional statements made by the Examiner, the Applicant does not acquiesce to the Examiner's additional statements. The example distinctions discussed by the Applicant are considered sufficient to overcome the Examiner's rejections. In addition, the Applicant reserves the right to pursue broader claims in this Application or through a continuation patent application. No new matter has been added.

## **REJECTION UNDER 35 U.S.C. § 102(b):**

Claims 1-32 stand rejected under 35 U.S.C. § 102(b) over *Lupien*.

The Applicant respectfully submits that *Lupien* fails to disclose each and every limitation recited by Claims 1-32. The Applicant further submits that Claims 1-32 patentably distinguish over *Lupien*.

The Applicant respectfully submits that the ***amendments to independent Claims 1, 11, 21, 31, and 32 have rendered moot the Examiner's rejection of these claims and the Examiner's arguments in support of the rejection of these claims.*** The Applicant further respectfully submits that amended independent Claims 1, 11, 21, 31, and 32 in their current amended form contain unique and novel limitations that are not taught,

suggested, or even hinted at in *Lupien*. Thus, the Applicant respectfully traverses the Examiner's rejection of Claims 1-32 under 35 U.S.C. § 102(b) over *Lupien*.

**Lupien Fails to Disclose, Teach, or Suggest Various Limitations Recited in Applicant's Claims**

For example, with respect to amended independent Claim 1, this claim recites:

**A system for displaying strikes between bids and asks in a market over time**, each strike specifying values for a plurality of strike variables, the system comprising a computer system operable to:

**receive data for a plurality of strikes**, the data reflecting values specified in the strikes for a plurality of strike variables; and

**generate a display of the received data**, the display comprising:

a plurality of polygons, **each polygon representing a strike between a bid and an ask**, each **polygon comprising first and second contiguous parallelograms** each associated with one or more different strike variables, **a first dimension of the first parallelogram reflecting a first value specified in the represented strike for a first strike variable, a second dimension of the first parallelogram reflecting a second value specified in the represented strike for a second strike variable, a first dimension of the second parallelogram reflecting a third value specified in the represented strike for a third strike variable, and a second dimension of the second parallelogram reflecting a fourth value specified in the represented strike for a fourth strike variable;**

a strike variable axis representing a range of values for an additional strike variable for which no value is reflected in the parallelograms, wherein the strike variable axis is substantially vertical and each polygon is positioned with respect to the strike variable axis according to the value specified in the represented strike for the additional strike variable represented by the strike variable axis; and

a time axis that is substantially perpendicular to the strike variable axis, each polygon being positioned with respect to the time axis according to a time at which the represented strike occurred. (Emphasis Added).

In addition, *Lupien* fails to disclose each and every limitation of amended independent Claims 11, 21, 31, and 32.

The Applicant respectfully submits that *Lupien* fails to disclose, teach, or suggest amended independent Claim 1 limitations regarding a **"system for displaying strikes**

***between bids and asks in a market over time***, each strike specifying values for a plurality of strike variables” and in particular *Lupien* fails to disclose, teach, or suggest amended independent Claim 1 limitations regarding “a plurality of polygons, ***each polygon representing a strike between a bid and an ask***, each ***polygon comprising first and second contiguous parallelograms*** each associated with one or more different strike variables, ***a first dimension of the first parallelogram reflecting a first value specified in the represented strike for a first strike variable***, ***a second dimension of the first parallelogram reflecting a second value specified in the represented strike for a second strike variable***, ***a first dimension of the second parallelogram reflecting a third value specified in the represented strike for a third strike variable***, and ***a second dimension of the second parallelogram reflecting a fourth value specified in the represented strike for a fourth strike variable***”.

The Applicant respectfully submits that a prior art reference (here *Lupien*) anticipates the claimed invention under 35 U.S.C. § 102 ***only if each and every element of a claimed invention is identically shown*** in that single reference (here *Lupien*). MPEP § 2131. (Emphasis Added). With respect to the subject application, *Lupien* fails to identically disclose, teach, or suggest “a plurality of polygons, ***each polygon representing a strike between a bid and an ask***, each ***polygon comprising first and second contiguous parallelograms*** each associated with one or more different strike variables, ***a first dimension of the first parallelogram reflecting a first value specified in the represented strike for a first strike variable***, ***a second dimension of the first parallelogram reflecting a second value specified in the represented strike for a second strike variable***, ***a first dimension of the second parallelogram reflecting a third value specified in the represented strike for a third strike variable***, and ***a second dimension of the second parallelogram reflecting a fourth value specified in the represented strike for a fourth strike variable***”. Thus, the Applicant respectfully submits that the Office Action has failed to establish a *prima facie* case of anticipation of Independent Claim 1 under 35 U.S.C. § 102 with respect to *Lupien* because *Lupien* fails to identically disclose “***receiv[ing] data for a plurality of strikes***”, as recited in amended independent Claim 1. The Applicant further respectfully submits that these distinctions alone are sufficient to patentably distinguish amended independent Claim 1 from *Lupien*.

## **The Office Action Fails to Properly Establish a *Prima Facie* case of Anticipation over *Lupien***

The Applicant respectfully submits that the allegation in the present Office Action that *Lupien* discloses all of the claimed features is respectfully traversed. Further, it is noted that amended independent Claims 1, 11, 21, 31, and 32 in their current amended form contain unique and novel limitations that are not taught, suggested, or even hinted at in *Lupien*. ***A prior art reference anticipates the claimed invention under 35 U.S.C. § 102 only if each and every element of a claimed invention is identically shown in that single reference.*** MPEP § 2131. (Emphasis Added).

The Applicant respectfully points out that "it is incumbent upon the examiner to identify wherein each and every facet of the claimed invention is disclosed in the applied reference." Ex parte Levy, 17 U.S.P.Q.2d (BNA) 1461, 1462 (Pat. & Tm. Off. Bd. Pat. App. & Int. 1990). The Applicant respectfully submits that ***the Office Action has failed to establish a prima facie case of anticipation in Claims 1-32 under 35 U.S.C. § 102 with respect to Lupien because Lupien fails to identically disclose each and every element of the Applicant's claimed invention, arranged as they are in Applicant's claims.***

## **The Applicant's Claims are Patentable over *Lupien***

The Applicant respectfully submits that amended independent Claim 1 is considered patentably distinguishable over *Lupien*. This being the case, amended independent Claims 11, 21, 31, and 32 are also considered patentably distinguishable over *Lupien* for at least the reasons discussed above in connection with amended independent Claim 1.

Furthermore, with respect to dependent Claims 2-10, 12-20, and 22-30: Claims 2-10 depend from amended independent Claim 1, Claims 12-20 depend from amended independent Claim 11, and Claims 22-30 depend from amended independent Claim 11, and are also considered patentably distinguishable over *Lupien*. Thus, dependent Claims 2-10, 12-20, and 22-30 are considered to be in condition for allowance for at least the reason of depending from an allowable claim.

Thus, for at least the reasons set forth herein, the Applicant respectfully submits that Claims 1-32 are not anticipated by *Lupien*. The Applicant further respectfully submits that Claims 1-32 are in condition for allowance. Thus, the Applicant respectfully requests that the rejection of Claims 1-32 under 35 U.S.C. § 102(b) be reconsidered and that Claims 1-32 be allowed.

## **THE LEGAL STANDARD FOR OBVIOUSNESS REJECTIONS UNDER 35 U.S.C. § 103:**

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, ***there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings.*** Second, there must be a reasonable expectation of success. Finally, ***the prior art reference*** (or references when combined) ***must teach or suggest all the claim limitations.*** The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, ***and not based on applicant's disclosure.*** *In re Vaeck*, 947 F.2d 488, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991); M.P.E.P. § 2142. Moreover, all the claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981, 180 U.S.P.Q. 580 (CCPA 1974). If an independent claim is nonobvious under 35 U.S.C. § 103, then any claim depending therefrom is nonobvious. *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1988); M.P.E.P. § 2143.03.

With respect to alleged obviousness, ***there must be something in the prior art as a whole to suggest the desirability,*** and thus the obviousness, of making the combination. *Panduit Corp. v. Dennison Mfg. Co.*, 810 F.2d 1561 (Fed. Cir. 1986). In fact, the absence of a suggestion to combine is dispositive in an obviousness determination. *Gambro Lundia AB v. Baxter Healthcare Corp.*, 110 F.3d 1573 (Fed. Cir. 1997). The mere fact that the prior art can be combined or modified does not make the resultant combination obvious unless the prior art also suggests the desirability of the combination. *In re Mills*, 916 F.2d 680, 16 U.S.P.Q.2d 1430 (Fed. Cir. 1990); M.P.E.P. § 2143.01. The consistent criterion for determining obviousness is whether the prior art would have suggested to one of ordinary skill in the art that the process should be carried out and would have a reasonable likelihood of success, viewed in the light of the prior art. Both the suggestion and the expectation of success must be founded in the prior art, not in the Applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991); *In re O'Farrell*, 853 F.2d 894 (Fed. Cir. 1988); M.P.E.P. § 2142.

A recent Federal Circuit case makes it clear that, in an obviousness situation, the prior art must disclose each and every element of the claimed invention, and that any motivation to combine or modify the prior art must be based upon a suggestion in the prior art. *In re Lee*, 61 U.S.P.Q.2d 1430 (Fed. Cir. 2002). Conclusory statements regarding common knowledge and common sense are insufficient to support a finding of obviousness. *Id.* at 1434-35.

**CONCLUSION:**

In view of the foregoing amendments and remarks, this application is considered to be in condition for allowance, and early reconsideration and a Notice of Allowance are earnestly solicited.

A Request for Continued Examination (RCE) is being filed electronically herewith to facilitate the processing of this deposit account authorization. **The Director is hereby authorized to charge the \$810.00 RCE fee to Deposit Account No. 500777.** Although the Applicant believes no additional fees are deemed to be necessary; the undersigned hereby authorizes the Director to charge any additional fees which may be required, or credit any overpayments, to **Deposit Account No. 500777.** If an extension of time is necessary for allowing this Response to be timely filed, this document is to be construed as also constituting a Petition for Extension of Time Under 37 C.F.R. § 1.136(a) to the extent necessary. Any fee required for such Petition for Extension of Time should be charged to **Deposit Account No. 500777.**

**Please link this application to Customer No. 53184 so that its status may be checked via the PAIR System.**

Respectfully submitted,

5 October 2007  
Date

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